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and INTERNATIONAL IP HOLDINGS, LLC

13  
14 UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

15 \_\_\_\_\_ X  
16 INNOVATION VENTURES, LLC,  
17 LIVING ESSENTIALS, LLC, and  
18 INTERNATIONAL IP HOLDINGS,  
LLC,

Plaintiffs,

19 - against -

20 PITTSBURG WHOLESALE GROCER,  
21 INC. d/b/a PITCO FOODS, ET AL.,  
Defendants.  
22 \_\_\_\_\_

RELATED CROSS-ACTIONS.  
23 \_\_\_\_\_ X

Case No. 12-5523 (WHA)

~~PROPOSED~~ CONSENT  
JUDGMENT AND PERMANENT  
INJUNCTION

24  
25 On consent of Plaintiffs Innovation Ventures, LLC, Living Essentials, LLC, and International IP  
26 Holdings, LLC (together, “Living Essentials”) and Defendants Elite Wholesale, Inc. (“Elite”),  
27

28  
~~PROPOSED~~ CONSENT JUDGMENT and  
PERMANENT INJUNCTION


CASE NO. C-12-5523-WHA


1 Tonic Wholesale, Inc. ("Ace"), Dapan USA Corp. ("Frontier"), and Sung Keun Lee (collectively,  
2 the "Elite Defendants"), it is hereby ORDERED, ADJUDGED and DECREED:


3 1. For purposes of this injunction, the "5-hour ENERGY® Marks" are:

- 4 • "5 HOUR ENERGY" (Registration No. 3,003,077);  
5 • "5-HOUR ENERGY" (Registration No. 4,004,225);

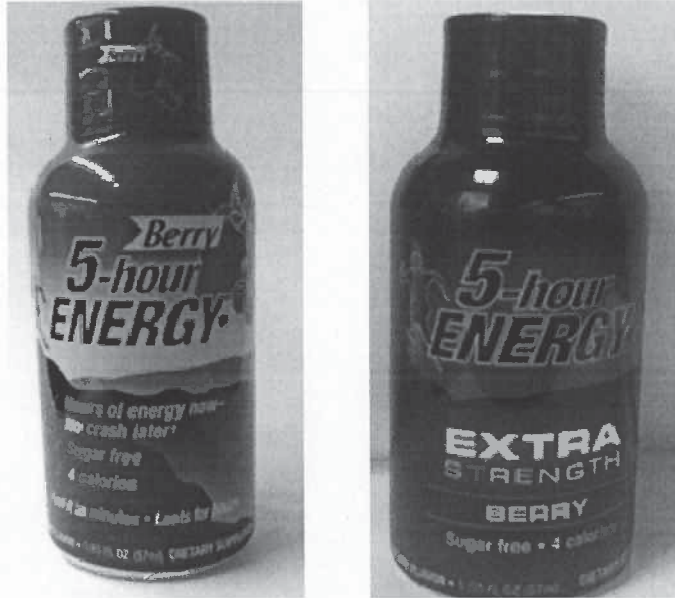
- 6  
7  (Registration No. 4,104,670);  
8

- 9  
10  which includes the wording "5-hour ENERGY" in black outlined in  
11 yellow, below which are the words "EXTRA STRENGTH" in yellow, along  
12 with a person in black silhouette, outlined in yellow, shown in an athletic pose  
13 adjacent to an uneven landscape, with the sky depicted in transitioning colors  
14 from black to red as the sky meets the landscape (Registration No. 4,116,951);  
15

- 16  , commonly referred to as "Running Man," (Registration No. 3,698,044);  
17  
18 and  
19

- 20  which includes the wording "5-hour ENERGY" in black outlined in  
21 yellow, along with a person in black silhouette, outlined in yellow, shown in  
22 an athletic pose adjacent to an uneven landscape, with the sky depicted in  
23 transitioning colors from red to yellow as the sky meets the landscape  
24 (Registration No. 4,120,360).  
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26  
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2. For purposes of this injunction, the “5-hour ENERGY® Trade Dress” is the distinctive packaging used to distinguish 5-hour ENERGY® products in the marketplace and which consumers associate strongly with the products. The packaging is shown as follows:



3. For purposes of this injunction, the “5-hour ENERGY® Copyright” is United States Copyright Registration Number TX 6-833-514 for the “Caution” label used on the 5-hour ENERGY® bottle. The copyrighted work reads as follows:

CAUTION: Contains about as much caffeine as a cup of coffee. Limit caffeine products to avoid nervousness, sleeplessness, and occasionally rapid heartbeat. You may experience a Niacin Flush (hot feeling, skin redness) that lasts a few minutes. This is caused by Niacin (Vitamin B3) increasing blood flow near the skin.

4. The Elite Defendants and their agents, servants, employees, and all other persons in active concert and participation with them, are permanently enjoined from:

- a. using any of the 5-hour ENERGY® Marks (or any marks confusingly similar thereto) on any counterfeit product in connection with the manufacture, sale, offer for sale, distribution, advertisement, or any other use of dietary supplements;
- b. using any logo, trade name, or trademark confusingly similar to any of the 5-

1 hour ENERGY® Marks which may be calculated to falsely represent or which  
2 has the effect of falsely representing that the services or products of the Elite  
3 Defendants or of others are sponsored by, authorized by, or in any way  
4 associated with Living Essentials;

5 c. infringing any of the 5-hour ENERGY® Marks, the 5-hour ENERGY® Trade  
6 Dress, or the 5-hour ENERGY® Copyright;

7 d. falsely representing itself as being connected with Living Essentials or  
8 sponsored by or associated with Living Essentials, or engaging in any act  
9 which is likely to cause the trade, retailers, or members of the purchasing  
10 public to believe that it or the other defendants are associated with Living  
11 Essentials, provided, however, that the purchase and sale of 5-hour  
12 ENERGY® products shall not in and of itself fall within this sub-paragraph;

13 e. using any reproduction, counterfeit, copy, or colorable imitation of any of the  
14 5-hour ENERGY® Marks in connection with the publicity, promotion, sale, or  
15 advertising of dietary supplements;

16 f. affixing, applying, annexing, or using in connection with the sale of any goods,  
17 a false description or representation, including words or other symbols tending  
18 to falsely describe or represent those goods as being 5-hour ENERGY® and  
19 from offering such goods in commerce;

20 g. buying, selling, transferring (other than to Living Essentials or law  
21 enforcement officials), altering, or destroying any counterfeit products with the  
22 5-hour ENERGY® Marks;

23 h. diluting any of the 5-hour ENERGY® Marks; and

24 i. assisting, aiding, or abetting any other person or entity in engaging in or  
25 performing any of the activities referred to in subparagraphs (a) through (g)  
26  
27  
28

above.

5. Nothing contained in this Judgment and Permanent Injunction is or shall be construed as an admission, express or implied, of any improper or illegal conduct, or of any culpability or liability by the Elite Defendants.

6. Any claims that the Elite Defendants may have against any other individual or entity, except for any claims that the Elite Defendants may have against the Dan-Dee Company, Inc., Fadi Attiq and Kevin Attiq, arising out of the Elite Defendants' purchase, distribution, advertising, offering for sale, and sale in commerce of the products containing the 5-hour ENERGY® Marks or the 5-hour ENERGY® Trade Dress are hereby assigned to Living Essentials.

7. In addition to other remedies, including damages, for contempt of this Permanent Injunction, in the event of breach or violation of the terms of this Permanent Injunction by the Elite Defendants, their agents, servants, employees, affiliates, subsidiaries, or any other person in active concert and participation with them, Living Essentials is entitled to a preliminary and permanent injunction against the breaching conduct solely upon a showing of a likelihood of success of establishing that such a breach occurred. A prevailing party, in addition to any award of damages or injunctive relief, shall be entitled to an award of actual attorneys' fees in any such dispute. Living Essentials and the Elite Defendants each agree that jurisdiction and venue for such an action exist in this District Court and the Elite Defendants waive any and all defenses based on personal jurisdiction and venue.



8. This Consent Judgment is entered pursuant to Rule 58 of the Federal Rules of Civil Procedure, and this action is hereby dismissed with prejudice against the Elite Defendants only, without costs or attorneys' fees.

Dated: November 11 2013

INNOVATION VENTURES, LLC,  
LIVING ESSENTIALS, LLC, and  
INTERNATIONAL IP HOLDINGS, LLC

ELITE WHOLESALE, INC.; TONIC  
WHOLESALE, INC.; DAPAN USA CORP.;  
and SUNG KEUN LEE

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**IT IS SO ORDERED.**

DATED: November 13, 2013.

  
HONORABLE WILLIAM H. ALSUP  
UNITED STATES DISTRICT JUDGE